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NOTES FOR A SPEECH BY

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MINISTER WITHOUT PORTFOLIO

TO

THE JOHN WHITE SOCIETY

OSGOODE HALL LAW SCHOOL

TORONTO, ONTARIO

Wednesday, April 8, 1970.

"Ensuring Sovereignty and Growth" -

"Toward a Policy on Foreign Ownership for Canada"

You have asked me to talk to you about what increasing numbers of Canadians are coming to look upon as one of the most important issues facing our country today. I refer to the implications of the extent of foreign ownership and control of the Canadian economy. I think it is correct to say that there is growing concern about this and what it may mean for the ability of the Canadian people and Canadian governments to make decisions about the present and future development of our national economic environment - and of our general development as a nation.

This concern appears to be based on doubts, - if not outright fears, - about Canada's future as a sovereign nation with so large a part of our economy controlled from abroad. In my opinion, there appears to be a growing consensus that the extent of foreign control of our economy and its trend of increase involves real problems for our independence. And in referring to sovereignty, the concern is about both legal sovereignty and also about what might be called politico-economic sovereignty.

The term legal sovereignty implies that within the Canadian political state, Canadian law, both federal and provincial - and only that law - should apply. This will be a relatively familiar concept to you. But perhaps something should be said here about the term politico-economic sovereignty, since

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it is a concept which has been less completely defined. - By politico-economic sovereignty, I mean - speaking in a Canadian context - the abilities of our governments, particularly our national government - the Federal Government - to implement effectively, desired national policies in the light of political and economic forces. Politico-economic sovereignty should not of course be looked on simply as an end in itself, but instead as an instrument to enable Canadians to make decisions and choices on goals and on methods of achieving them. - For example, because of the scale in which it engages in international trade, and takes part in multi-lateral and other arrangements on the scope and methods of such trade, Canada has increased its interdependence with the rest of the world. In doing so, it has like other major trading nations correspondingly given up a degree of politico-economic sovereignty. It has accepted limitations on the extent it can exercise this sovereignty. In other words, in developing our trade policy over the years the Canadian people have consciously and implicitly accepted a form of limitation of their theoretically absolute autonomy in order to achieve certain other well defined national objectives.

Direct foreign investment in Canada has brought benefits but it also has meant, and can increasingly mean, what amounts^{to} limitations on our ability to make our own decisions on our present and future development. This has come about in my view without a clear understanding or recognition of what all the

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implications were or could be. It could be said that until recently, at least, there was no widespread conviction that this country's degree of reliance on capital from abroad was not the appropriate course for Canada. And it has not been unusual to hear some Canadians, at least, say that while they wished we owned more of our economy, we simply didn't have the large pools of risk capital needed and, since we didn't wish to have lower standards of living, things would have to continue much as they were with foreigners owning more and more of the economy and they went on to say that it probably didn't have any real meaning for our independence anyway.

The assumptions underlining thinking of that kind are now being increasingly questioned. What, in fact, are some of the alternatives confronting the Canadian people on this current issue?

Let me take a moment to review some of the relevant aspects of the background to this question.

First what is the extent to which Canadian industry both primary and secondary is subject to non-resident control? According to information available to the Government under the Corporations and Labour Unions Returns Act, total assets of Canadian corporations are now approaching \$200 billion. Of this amount, approximately \$150 billion are in the hands of Canadian-

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dominated firms and \$50 billion in foreign-dominated companies. This figure of \$50 billion I should explain, is an estimate of the book value of Canadian companies in which foreigners own more than 50% of the equity. Although most firms in the category will be effectively controlled from abroad, there may be a few in this category where policy control rests in Canadian hands. Similarly, there are doubtless a number of large firms effectively controlled from abroad even though more than one-half of their equity is owned by Canadians.

A fact to be noted is that the non-resident dominated firms tend to occur with greater frequency amongst the larger corporations and it is these larger firms which seem to be growing most rapidly in Canada today.

Direct foreign investment has been concentrated in two particular sectors of the economy - the resource-based industries and the manufacturing sectors. In 1967, for example, 60% of the assets in the mining industry belonged to corporations which were at least 50% non-resident owned. In mineral mining, the figure was 42%; in mineral fuels which includes oil and gas almost 82%. In the case of the manufacturing industries, non-resident dominated firms own more than some 60% - with higher proportion in some sectors, 90% of a craft and aircraft parts industry, 80% of the chemical industry.

However, resident-controlled firms tend to pre-dominate in finance, transportation, communications and utilities, construction and retail trade.

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All this reflects in part the fact that in the past, Canadian governments have not looked upon foreign ownership and control as a general problem, requiring a comprehensive policy response - but instead as something which required particular solutions for particular sectors of the economy. - Let me trace some of these actions for you briefly.

The Bank Act was amended in 1967 - to ensure that banks should be at least 75% owned by Canadians. - In 1965 there was similar legislation with respect to periodicals and newspapers, (with certain well known exceptions).

With respect to banks, the law provided that no one person or group of associated persons, Canadian or foreign, could own more than 10% of the voting shares of a bank, and that the total foreign ownership could not exceed 25%. This legislation also provided that, if the ownership of any bank was concentrated more than 50% in the hands of one foreign owner or associated group, it could not grow above a certain size without formal permission by the Government with regard to the ownership requirements. In the case of radio and television broadcasting stations, Parliament decided a few years ago that 80% of the equity should be held by Canadians. - Changes in the Broadcasting Act regulations have been made recently to ensure that stations are effectively controlled by Canadians. This legislation does not

*Also rules
on how
much foreign
staff
they can
broadcast -*

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provide for any complete exemption for firms not Canadian owned or controlled prior to its effective date.

Another approach has been to legislate with a view to ensure that at least some of the firms in a particular sector remain under Canadian control. Amendments introduced in 1964 to the Loan Companies Act, the Trust Companies Act, and the Canadian and British Insurance Companies Act, limited the proportion of shares which non-residents could own in companies incorporated under these federal statutes to 25%, with an added provision that no single foreigner could own more than 10%. This was similar to what was done for banks, with two important differences. The amendments did not deal with all institutions in those categories, provincially incorporated ones were of course not included. Under the constitution, banking is subject to the exclusive jurisdiction of the Federal Parliament, something which is not the case for other financial institutions. Secondly, the legislation provided that those federally incorporated trust, loan and insurance companies controlled from abroad at the time of the legislation could continue subject to foreign control. This aspect did not arise to any real extent for banks since there was only one small bank wholly owned by one foreign entity when the 1967 amendments were passed.

More recent actions in respect of sales finance companies and uranium mines have an objective similar to that of the legislation dealing with trust, loan and insurance companies,

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...to ensure a significant Canadian presence in these industries.

Going back much further into Canadian history, policies which had been developed for other purposes had the effect of pre-empting for Canadians control of certain sectors of the economy through a degree of public ownership. Canadian National and Air Canada are perhaps the two most important examples. More recently, through the legislation on Telesat, the Federal Government has ensured Canadian control in the field of satellite communication. Federal Government investment in partnership with private interests in PanArctic has helped ensure a significant Canadian element in the development of the oil industry in Canada's north.

There is possibly a further approach that can be identified as having been taken by the Canadian Government on at least one occasion in the recent past. The Canada-U.S. Automotive Agreement can certainly be viewed as an effort to ensure, given the high degree of foreign ownership of the Canadian automotive industry, that Canada should maximize the benefits obtained from this investment in terms of jobs, production, exports and so on. These aims have certainly been achieved to an important degree.

In addition, there are other measures which have been taken in recent years. By making amendments to the Corporations

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and Labour Unions Returns Act in 1965, Parliament improved the extent of our information about foreign ownership. Amendments to the Canada Corporations Act, now before Parliament, are intended to ensure publication of more information on large private corporations comparable to that available for public corporations. This will affect wholly-owned subsidiaries of foreign firms, which include many of the largest enterprises in our country. Until now, they have not been obliged to publish financial information on their Canadian corporations. Of course these pending amendments can apply only to companies incorporated under the Federal Canada Corporations Act. Provinces generally have not yet enacted similar disclosure rules for companies incorporated under their law.

Perhaps I might deal with another example. Resource-exploitation in the provinces is of course under provincial jurisdiction but the Federal Government has constitutional authority over exploitation of resources in the Yukon and Northwest Territories. The Canada Mining Regulations provide that mining leases in the Northwest Territories can be granted only to Canadian citizens, to companies 50% beneficially owned by Canadians or to companies whose shares are listed on a recognized Canadian stock exchange, and in which Canadians have a chance to participate in the ownership and financing. In effect, the regulations do not require Canadian control but that Canadians have an opportunity to participate in the venture. Similar regulations apply for oil and gas leases both in the Northwest Territories and the Yukon.

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The provincial governments have also legislated to some extent in this area. In 1947, the Ontario Government passed "The Business Records Protection Act". The Quebec Government passed similar legislation - "The Business Concerns Records Act" - in 1958. Both were aimed at preventing provincially incorporated companies from complying with any requirements or directions from authorities outside of the Province that they make available records to them, except under certain circumstances. There have also been initiatives by certain provincial governments to ensure that, in certain circumstances, particular raw materials should not leave the province concerned without first receiving a certain degree of processing there.

What all of these different actions have in common is that they have occurred basically in reaction to problems and circumstances in particular sectors of the economy at particular points in time. However, as I said a few moments ago, there appears to have been a consensus emerging over the past several years that this essentially reactive and ad hoc approach is no longer adequate and something broader and more systematic is required if this country's interests are to be properly served.

In an attempt to have the matter studied in a more complete way, in 1967 the Government appointed a Task Force on the "Structure of Canadian Industry". It presented its report early in 1968 - a report entitled "Foreign Ownership and the

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Structure of Canadian Industry". It is usually known by the name of the Task Force's chairman, Melville Watkins, but it represents the work and the synthesis of the views of all of the group of eight economists who composed the Task Force. The conclusion and recommendations of the report (and I am not talking about the chairman's later manifesto) as well as a growing general concern about the development of our material and human potential and matters such as the recent uranium situation - all these provided inputs which affected the development of the growing degree of consensus - to which I referred - that further action by governments was required on this whole problem area.

Some weeks ago - the day after his initial statement on the uranium industry - the Prime Minister said in the House - in effect - that the Government was developing "its general policy applying to the whole problem as it affects the Canadian economy". He indicated that a statement would later be made later on decisions reached by the Government on such a policy. At present, this continues to be a matter for Cabinet discussion. The final decisions have not yet been taken on such a policy and proposals to Parliament and the public for implementing it. I am therefore obviously not in a position to say what this policy and proposals linked with it may be. But I think I can at least suggest some of the kinds of considerations any government would be looking at in developing policy in this area.

Two main factors appear to be at the root of the present concern about the implications for Canadian sovereignty,

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which could be caused by the extent of foreign investment in Canada.

One is the feeling that non-resident ownership of a Canadian enterprise could have in addition to beneficial implications certain adverse implications as well for Canada. - Examples of such possible adverse implications are that it could give rise to problems due to the extra-territorial application of foreign law; it could retard the development of Canadian entrepreneurship; it could lead to an undue outflow of financial resources which might otherwise be used advantageously in Canada. - I mention these merely as examples of what could happen and will come back to some of these points in a few moments. Now I am not saying that foreign investment has not brought benefits to Canada - I am saying only that there is evidence that along with the benefits there may be some serious problems - some definite costs for Canada associated with it.

The second basis of public concern appears to be the growing power and increasing importance of the so-called "multi-national corporation". First a word on the term "multi-national corporation". If one means by this expression a company staffed by nationals of many countries, including those at the most senior levels, and a company whose ownership is widely distributed across many countries, then it is doubtful that there are more than a handful of such companies now actually in existence. Rather when people speak of the multi-national corporation what they are generally talking about is a company that is entirely or largely

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owned and largely staffed by the citizens of one country with the head office resting in that country, and with various affiliated firms, effectively controlled from that head office located in one or more foreign lands. This is especially true of most multi-national corporations based in large countries, particularly the United States. On the other hand, I am told that when such firms are based in other countries, like Canada, there is perhaps a greater tendency for ownership and staff to be drawn from more than one country and for them to be somewhat closer to a genuinely multi-national model.

This latter kind of business organization has been experiencing a very rapid rate of growth in recent years and is coming to account for an ever increasing proportion of the production of western countries. The multi-national corporation contains within itself the potential - but I suggest not necessarily the certainty - of transmitting to peoples ^{over} the world many of the benefits of ~~various~~ ^{new} forms of business organization, with all that this implies in terms of product innovation technological transfer and international rationalization of resources.

However, the multi-national corporation can also cause problems which have serious implications for the sovereignty and effective development of national states. For instance, these companies tend to have a great deal of leverage in dealing with national governments, particularly those of relatively small countries.

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...enable them to play off one government against the other in negotiating the most attractive terms for new investments. This is something which can also happen within a country organized on a federal basis with several levels of government. Similarly, the international scope of their operations gives them opportunities to escape the complete jurisdiction of national law - in our case Canadian law - relatively more easily than those that operate more or less entirely within Canada. A further point is that the multi-national corporation normally has the financial resources needed to buy out or to prevent the coming into existence new sources of competition. Indeed, as the Barber Report on farm machinery argues, where the multi-national firm is dominant there appears to be a tendency toward what the economists call "oligopoly" where a few large firms dominate the industry and there is a tendency toward administered prices and the lessening of the range of competition which one would otherwise expect in a more competitive market situation.

This is why I spoke of the possibility but not the certainty that a multi-national corporation would transmit across the world the benefits I mentioned of that modern form of business organization. Such firms are in a position to escape the pressures of competition since they do not have to operate in a true market system. To the extent that they do this they will not be obliged through the operation of the market and of the pressures of competition to pass on to the public benefits of their form of

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organization. - They would not be coliged to do this any more than firms which came to operate within national boundries and which because of their size and financial strength were able to dominate and control markets within these boundries, and did not, therefore, pass on the benefits of the scale of operation to the public of their own accord. - Instead the supervision and regulation by national governments was necessary to ensure that this took place either through re-creation of a form of competition or more directly. It can be argued therefore that in the absence of the pressures of competition one can be certain that the benefits of the multi-national form of business organization will be made available to people of the countries in which such firms operate, - only - through appropriate forms of regulation and supervision by government. -

In the long haul - over two decades perhaps - it may be possible for governments to deal with some of the difficulties posed by the multi-national firm through harmonization by negotiation of their policies on such matters as Taxation and Anti-Trust. It is also possible that there could be an internationally agreed code prescribing the rules within which multi-national companies will be obliged to operate. - Further away in time, there may be effective international sanctions against various types of practices which are objectionable. The Canadian Government is taking an active role in international discussions, especially in the OECD, aimed in this direction. Nevertheless, it is clear that our international initiatives will not in

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of living. This is clearly a major pre-requisite for any policy which deals with the problem of foreign ownership and control. Thus it seems to me that no Canadian Government could contemplate cutting back on foreign investment without taking parallel measures to ensure that the necessary investment funds can be generated domestically. At the same time, it should be noted that a great deal of accumulated "foreign" investment in Canada is the result of ploughing back the retained earnings, borrowings, and depreciation acquired in Canada by foreign owned companies; in effect much so called "foreign investment" represents capital earned or raised in Canada.

Also there is the need to maintain world confidence
in the Canadian currency. This means that any Government
measures would have to take into account the attitudes of world
capital and money markets.

Finally, it must be recognized that it is likely that
any action taken would require efforts not solely by the
federal government but by the provinces as well. There is
divided and overlapping jurisdiction in areas like industrial
and resource development and corporate activities. This means
consultation and cooperation between both levels of government.
- And provinces with regions having lower standards of living
and slower rates of growth than others will be concerned -
as will the federal government - about the desire of their
populations to catch up with more fortunate areas of the country.

I have been attempting to outline in my previous
comments some of the factors - though not all of them - which
affect the range of the options available to Government in
developing policy on this very important issue. What I would
now like to do is to examine and to consider what - even after taking
such factors into account - would be likely to happen if we continue/
the current practice, in which government decisions are made, -
if at all, - in this area - on a case by case basis - primarily
in reaction to the developments in particular sectors.

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Another likely consequence of such an approach is that the proportion of our economy subject to foreign control would continue to grow. One reason is that there are more foreign-controlled firms in the world, both in Canada and abroad, than there are Canadian controlled firms. Many of these foreign controlled firms are already operating within our borders, or very near to our borders. When a Canadian firm becomes ripe for takeover, there is thus a very great likelihood of the firm being taken over by a non-resident controlled company.

Another factor which increases the likelihood of U.S. firms in particular looking for acquisitions in Canada are the merger guidelines. Under United States law these make it very difficult for major U.S. firms to make acquisitions within the United States. - Moreover, such firms often have such extensive financial resources that it is relatively easy for them to outbid Canadian-controlled firms in taking over Canadian manufacturing or resource-based firms. - If this is correct, then it follows that problems connected with foreign ownership will also increase. Let us look at this as it pertains to the matter of extra-territorial application here of foreign law - a central part of the problem.

I think the evidence is increasingly clear that

Canadian subsidiaries of firms based in another country can not have been used as instruments of what amounts to an extra-territorial application of that parent country's laws and policies. There is certainly evidence of this with respect to the United States. Professor Kotstain, of the University of Toronto, and a member of the Task Force, described this problem insofar as it is connected with the United States at least - in his recent testimony before the House Standing Committee on External Affairs as follows: "The central issue is the intrusion of American jurisdiction in Canada through the agency of the American subsidiary." He further expanded on this in the following terms. "A review of the present areas of control by the American government over its subsidiaries abroad illustrates the underlying principle involved, namely that the American government operates on the assumption that these subsidiaries are a proper area of its own jurisdiction; it is not prepared to relinquish its general jurisdiction in any way. it defers to the interest of the host country through apparent administrative concessions only."

Let us look at some of the evidence with regard to U.S. subsidiaries. As you know the United States had been confronted with balance of payments problems since the early 1960's. When the United States authorities first began to deal with this situation, they issued guidelines to U.S. firms

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about the direction and size of their capital movements and these guidelines were widely regarded by subsidiaries of U.S. firms, including those in Canada, as applying to them. The Canadian government thus found itself in the position of having to remind Canadian corporations of the responsibilities of their corporate citizenship. Later, the U.S. guidelines were made mandatory. The Canadian Government believed the effect of these guidelines on investment flows might cause serious difficulties for Canada. We were, in fact, able to negotiate important exemptions for Canada from the U.S. guidelines and these exemptions were highly valued. But the criticism remains that we were in the position - unacceptable, I think, to Canadians generally - of having to negotiate with a foreign government about what would be appropriate practice for Canadian firms located in Canada.

There have been other important manifestations of the problem of extra-territoriality. Regulations made under the U.S. Trading with The Enemy Act appear to have affected attitudes of Canadian subsidiaries of United States controlled firms on development of export trade with certain countries. There are other U.S.

regulations which individually affect exports of some products from Canada to certain countries, if the exports contain

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components or technology originating in the United States. Of course, it is difficult to judge to what extent Canadian trade has in effect been prevented from developing due to these measures, since it is difficult to evaluate the effectiveness of any law solely by counting the number of times it has been violated.

A third example is U.S. anti-trust regulations. This could make it difficult for Canadian firms which are controlled from the United States to rationalize their production in Canada when the circumstances of the Canadian market indicate the desirability of such action.

I do not set out these matters because of any negative attitude toward our neighbour to the south. I do so because they provide some reasonably well documented examples of how

difficulties for Canada can arise out of the actual or potential extra-territorial application of the law of another country. That is to say, they provide illustrations of how the citizenship of these owning and controlling firms in Canada can bring about a shift of decision-making to individuals and entities outside our borders. In my view if we consider the extra-territorial application of foreign law to be unacceptable for Canada such application should be equally unacceptable whether or not we agree with the domestic or foreign policies of the government from which that law originates.

What is likely to be the result of growing foreign control of the Canadian economy? In the formation of public policy generally, economic and political aspects can never be completely separated. Accordingly, to the extent that economic power, - the ability to make effective economic decisions - falls further out of Canadian hands there will be increasing limitations on the scope of the real ability of Canadian individuals and governments to make decisions in these areas. - And Canadian governments and individuals will face increasing amounts of pressure from foreign individuals and their governments. If non-resident ownership and control continues to increase, there will therefore be a growing weakening of our ability and capacity to make our own decisions about national objectives and steps to implement them.

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There are observers who doubt that the extensive degree of foreign ownership and control of the economy is really conducive to the most effective development of Canadian entrepreneurship and technological development or the optimum total development of our resources from the point of view of essential Canadian interests. When it comes to our human resources for example, the best minds, both in business and science, are likely to be attracted to the head offices and main research laboratories of parent firms abroad where the key decisions and important research are being carried out.

There are those who believe that we always benefit substantially by being able to import relatively easily and cheaply technology and management "know-how" from abroad, along with the capital imported from there. The evidence on this remains conflicting, and while this may be true when the matter is looked at in the short-term, there are those who doubt that our long-run interest will be served by our continuing to leave ourselves in such a position of dependency.

Obviously, I cannot anticipate in any way at this time the outline or details of the policy the government may decide on.

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However, perhaps I can indicate something of my own views about the various aspects - the kinds of problems the government must deal with in developing policy in this area. The pattern in the past has been to legislate to limit foreign ownership in an individual sector and develop particular rules for that sector. If we are to have a general policy, extending more widely across the economy, we shall obviously have to develop a more general set of objectives for it. However, it is unlikely in my view that in order to reach these objectives it will be possible to have an identical set of rules for each sector of the economy or identical policy instruments for applying them in every case.

It is likely that this will require the development therefore not only of overall objectives but also of criteria to guide us in determining which sectors or firms in the economy require a higher degree of Canadian ownership than others so that we could have an approach which, while broader, is consistent and as far as possible can be known in advance by all concerned.

I don't believe that any policy decided on is likely to be one involving positions considered extreme or unfair or will be one which fails to recognize our continuing need for capital and, where necessary, the role of foreign sources in helping to provide it. This means therefore that our policies should be such as to ensure the maximizing of the benefits to Canada from

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foreign investment. - I am personally confident that this need not be inconsistent with the primary aim of those from abroad who may be interested in investing here - the obtaining of a fair rate of return on that investment.

But all this will require that we devise further legislative means of dealing with the problems of the extra-territorial application of foreign law here to foreign subsidiaries. It will also require ensuring that foreign-controlled firms behave as good corporate citizens. We will have to consider what further means are at our disposal which may be required to ensure that all Canadian firms - including foreign subsidiaries - develop fully their potential, that they do their purchasing in Canada when economic, that they do their proper share of research and development in Canada, and so on.

Also, our policy must be a positive one in the sense of encouraging Canadians to invest in Canada, of widening the opportunities for such investment and of generally stimulating Canadian entrepreneurship and technology.

Now in this regard the government has confirmed recent intention of proceeding with the creation of a Canada Development Corporation and that a bill will be presented to Parliament for this

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purpose in the near future. Such a corporation could well be one element of such a policy. Also some of the proposals in the White Paper on tax reform have as their stated purpose the encouragement of Canadians to invest more of their money into Canadian equities.

But further consideration should also be given as to what additional measures should be devised to assist Canadian-controlled firms to participate more fully in the growth of the economy.

The Government therefore is working to evolve a policy of an overall and more comprehensive nature to respond to the growing degree of consensus to which I have referred, - that further action by governments is required - to ensure that Canada's sovereignty is not weakened by the extent of foreign ownership of our economy. At the same time, it should not in my view be necessary for Canadians to pay a price in terms of slower economic growth and lower standards of living if the policies involved are worked out and applied with skill and judgment.

My own view is that if what we do is essentially positive and is essentially designed to encourage the development of Canadian potential, both material and human, in a way beneficial to our country, it should not have adverse effects on the flow of capital here insofar as it is required for Canadian needs. I think

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we can develop policies which are in Canada's interests and which at the same time are not unfair to those who invest capital here to the extent that we continue to need it.

I believe it is possible to harmonize two essential requirements - the requirement for capital to sustain a high rate of growth - and the requirement that Canadians be able to make decisions as to how this growth and development - including the development of our identity - should proceed. The essence of any policy in this area the Government is working on must be based ^{therefor} / on having a vigorous economy with balanced growth in all parts of our country, while ensuring that Canadian participation in our economic development is expanded. - Appropriate Government policies I believe can be worked out to ensure that we remain an independent sovereign state and at the same time fulfill the economic requirements of our people from one end of Canada to the other. - This is the task which we now have in hand.

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But it is one in which there is a place for those with your skills who are outside of government as well. The research - the proposals - of both academic and practicing lawyers can be increasingly helpful in the consideration and development of the legislative and policy instruments necessary to ensure that the rule of law here - something which is a basic attribute of an organized modern and humane society - is that springing essentially from Canadian sovereignty and has therefore as its purpose the defining and achieving of what we in this country feel should be the goals now and in future for Canada and Canadians.